Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

DIANA VAZQUEZ-VALENTIN,
Petitioner

v.

VICTOR J. SANTIAGO-DIAZ, in his personal capacity and as Mayor of Toa Baja; MUNICIPALITY OF TOA BAJA; MILAGROS DELGADO-ORTIZ, in her personal capacity and as Human Resources Director of the Municipality of Toa Baja,
Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

A. Whether the appellate court erred by ordering the parties, after remand, to file supplemental briefs on three additional alleged errors presented by respondents in their original appellant's brief, but not decided upon by the appellate court; instead of following this Honorable Court's limited remand in No. 04-1322, related to *Unitherm Food Systems, Inc. v. Swift-Eckrich Inc.*, 546 U.S. ____ (2006).

B. Whether the appellate court erred by finding reversible error in the district court's exclusion of certain documentary evidence, under Fed. R. Evid. 403, and remanding the case to the district court for further proceedings.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Diana Vazquez-Valentin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals appears in *Vazquez-Valentin v. Santiago-Diaz*, 459 F.3d 144 (1st Cir. 2006) (Appendix 1a-26a).

JURISDICTION

The Court of Appeals entered its judgment on August 22, 2006. (Appendix 27a). The jurisdiction of this court is invoked under 28 U.S.C. § 1254 (1).

STATEMENT

On May 14, 2002, after nine days of jury trial, the jury returned a verdict in favor of plaintiff Diana Vazquez-Valentin, petitioner herein, and against all defendants, respondents herein, for claims based on political discrimination and constructive discharge under the First Amendment of the United States Constitution and 42 U.S.C. § 1983. On that same date the district court issued its judgment pursuant to the jury verdict.

Defendants appealed the case to the First Circuit Court of Appeals on November 3, 2003, raising the issue of the insufficiency of the evidence to withstand a motion as a matter of law, and three other alleged errors: (1) the district court's evidentiary rulings, (2) the district court's order for reinstatement of plaintiff, and (3) qualified immunity. On September 22, 2004, the appellate court issued a decision vacating the judgment of the district court and ordering it to enter judgment for the defendants. *Vazquez-Valentin v. Santiago-Diaz*, 385 F.3d 23 (1st Cir. 2004). The court of appeals stated in that decision that although defendants had failed to renew their motion under Rule 50 after the jury verdict, to preserve for appeal the district court's denial of said motion, nevertheless, it was invoking its authority to assess the sufficiency of the evidence in the case.

Plaintiff-appellee Vazquez-Valentin filed a petition for rehearing or for rehearing en banc citing this Honorable

Court's precedent *Cone v. West Virginia Pulp & Paper Co.*, 330 U.S. 212 (1947), and, in addition, citing First Circuit political discrimination cases where similar evidence had been found to constitute First Amendment political discrimination violations; however, the petition was denied on November 17, 2004.

Ms. Vazquez-Valentin filed a petition for a writ of certiorari, No. 04-1322, which this Honorable Court granted on February 21, 2006, vacating the judgment and remanding the case to the court of appeals for further consideration in light of *Unitherm Food Systems, Inc. v. Swift-Eckrich, Inc.*, 546 U.S. ____ , 126 S.Ct. 980, 163 L.Ed.2d 974 (2006). Appendix 28a. *Vazquez-Valentin v. Santiago-Diaz*, __U.S. __, 126 S.Ct. 1329, 164 L.Ed.2d 43 (2006).

On March 28, 2006, after the remand, the court of appeals ordered the parties to file supplemental briefs on the three alleged errors of the appellant's brief not decided by

them originally, since they had concentrated on a fourth alleged error regarding the insufficiency of the evidence of political discrimination. Appendix 29a.

Ms. Vazquez-Valentin moved for a stay and reconsideration from the appellate court, requesting it to follow this Court's mandate and to limit itself to the *Unitherm Rule* 50 (b) issue, but the appellate court declined to stay and reconsider and a petition for a writ of mandamus or prohibition was filed with this Court: *In re Diana Vazquez-Valentin*, No. 05-1390.

On August 22, 2006, the court of appeals decided again to vacate the jury's verdict in favor of Ms. Vazquez-Valentin and to remand the case to the district court for further proceedings consistent with their opinion. *Vazquez-Valentin v. Santiago-Diaz*, 459 F.3d 144 (1st Cir. 2006). Appendix 1a-26a.

On October 2, 2006, this Court denied the petition for mandamus or prohibition. This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

Petitioner requests from this Honorable Court to grant her petition for a writ of certiorari pursuant to Rule 10 (c) of the Rules of this Court, because there are special and important reasons; to wit:

A. The Scope of the Supreme Court's Mandate on Remand.

The Court of Appeals for the First Circuit did not comply with this Honorable Court's mandate and, on its own, the court ordered the parties to file supplemental briefs addressing the three alleged errors discussed by respondents in their original appellant's brief, but not decided upon by the appellate court in their original decision, since the court had focused on the insufficiency of the evidence alleged error. See

Vazquez-Valentin v. Santiago-Diaz, 459 F.3d at 147; Appendix 3a.

This order by the appellate court forces the parties to engage in repetitive litigation followed by additional appeals, wasting more resources, time and money, and it causes a delay in the solution of the case at hand, which is contrary to the judicial policy. See Rule 1 of the Federal Rules of Civil Procedure for the just, speedy, and inexpensive determination of every civil action.

For example, in footnote 5 of its decision, the appellate court states that it does not need to discuss the two other alleged errors, since it is deciding the matter on the evidentiary ruling issue. *Vazquez-Valentin v. Santiago-Diaz*, 459 F.3d at 153, n.5. Should the appellate court be revoked on the evidentiary ruling issue then, and if the case is remanded, the court could review any of these two other alleged errors, and so on. As Justiniano the Roman scholar

said "Delayed justice is not justice at all".

This petition for certiorari gives this Honorable Court the opportunity to establish a clear policy regarding this distinction between a general and a limited remand. Since, at present, there seems to be a vacuum regarding this issue. The Bar and the Circuits will benefit if this Honorable Court issues the certiorari. We have to be candid with this Honorable Court and confess that it took us by surprise when the First Circuit did not follow the specific mandate issued by this Court in February 21, 2006. For us the mandate is a specific and a limited one and it gives unambiguous instructions to the lower court. It says as follows: "The petition for a writ of certiorari is granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the First Circuit, for further consideration in light of *Unitherm Food Sys. v. Swift-Eckrich*, 546

U.S.____2006." Appendix 28a. As we can see the First Circuit was limited to follow the specific instructions of the mandate, but instead, it went ahead and *motu propio* decided to go into other matters not included in the mandate. We take the position that such mandate was not a general one, but a limited one. According to Black's Law Dictionary, 7th Edition, at page 973, the Mandate Rule is defined as follows: "The doctrine that, after an appellate court has remanded a case to a lower court, the lower court must follow the decision that the appellate court has made in the case unless new evidence or an intervening change in the law dictates a different result." Corpus Juris Secundum, edition 1948, at Volume 55, page 660, defines Mandate, in relation to a superior court and an inferior court, as follows: "It is a judicial command or precept issued by a court or magistrate, directing the proper officer to enforce a judgment, sentence,

.r decree, and there must not only be an order judicially given, but in order to be a mandate such order must go to an administrative officer, as a sheriff or coroner, who under it, is to perform some act carrying out a decree or judgment."

In view of the above definition it is clear then, that the First Circuit did not follow the mandate of this Honorable Court. The result of such judicial action is to compel Ms. Vazquez-Valentin to be litigating for many years, issue by issue, little by little, wich is against the judicial policy concerning civil litigation of a just, speedy, and inexpensive determination. We say this because the appellate court in its opinion stated the following, at page 148: "In our 2004 decision, we did not reach the merits of several defendants' arguments for a new trial because we focused instead on the sufficiency of the evidence. In fact, we noted that we had doubts about the court's evidentiary rulings but we did 'not have to decide the issue.' *Vazquez I*,

385 F.3d at 25 n. 1." Then it adds, "In light of the remand from the Supreme Court, we most now address the rulings that prompted such doubts".

Vazquez-Valentin v. Santiago-Diaz, 459 F.3d at 148. Appendix 6a. It is troublesome to follow such line of thought because this Honorable Court did not mandate the First Circuit to use its doubts as a basis to analyze the three other errors raised by the appellants. Therefore, the circuit court went beyond the mandate issued by this Honorable Court.

B. The Evidentiary Ruling.

The court of appeals vacated the jury's verdict and remanded the case for a new trial because the district court excluded hearsay documents by the Comptroller of Puerto Rico (an audit report) and by another Commonwealth agency know as OCALARH (The Central Labor Office for Human Resources of The Commonwealth of Puerto Rico), that had examined the Municipality's personnel practices and had

found them deficient and/or illegal in certain respects. The appellate court concluded that (1) the Commonwealth documents were wrongly excluded because they were not hearsay, since they were not offered to prove the truth of the matter asserted (Fed. R. Evid. 801(c)), and that (2) the district court's contention that the Comptroller's audit report could be unfairly prejudicial to Ms. Vazquez-Valentin, because it did not address her specific situation and, thus, was excludable under F. R. Evid. 403, was erroneous, because the offending statements could have been redacted instead of excluding the whole audit report. However, it should be pointed out that the defendants did not request to the district court that such literary surgery be done.

The appellate court correctly asserted that the crux of the matter was for the jury to determine whether the defendants had demoted Ms. Vazquez-Valentin as a result of her political affiliation, or for some other reason. *Vazquez-*

Valentin v. Santiago-Diaz, 459 F.3d at 151. Appendix 16a-17a.

We submit that the jury already found that Ms. Vazquez-Valentin was demoted because of her political affiliation and not for some other reason, and to this effect we offered plenty of evidence at trial both direct and circumstantial. See *Acevedo-Diaz v. Aponte*, 1 F.3d 62 (1st Cir. 1993), where the appellate court found political discrimination against six plaintiffs with situations, some very similar, and some exactly, like Ms. Vazquez-Valentin's situation at the Municipality of Toa Baja.

However, in our case the appellate court reasoned that the jury could not find the "some other reason", because they had no access to the Comptroller's audit report and the Commonwealth agency's letters. Specifically, the court stated:

"First, the district court did not allow the jury to know that the audit report had contained the admonition that '[f]ailure to heed a recommendation in an audit report from this Office, without just cause, may constitute a violation of [Puerto Rico law].' Second, the court's summary of the letter to Delgado did not let the jury know that the Commonwealth had recommended 'reclassifying [the affected employees] into positions for which they meet the requirements in accordance with the 1991 plan,' which is precisely the course the defendants claimed that they took in regard to Vazquez. Indeed, the district court's summary of the letter did not even let the jury know that the Commonwealth had advised the defendants to reclassify employees at all."

Vazquez-Valentin v. Santiago-Diaz, 459 F.3d at 153. Appendix 22a-23a.

We submit that these two alleged omissions were not harmful errors and, therefore, were inconsequential as to the jury's finding of political discrimination. In Ms. Vazquez-Valentin's case the district court had already examined the audit report and found that it did not apply to her particular situation ("...the Court finds difficulty in permitting the document into evidence because of the prejudicial nature of the document against plaintiff herself. That is to say, that the

document cannot be taken for the truth for which it purports to represent. The report does not speak about plaintiff or about any of plaintiff's promotions." Jury Trial transcript, page 551) and, second, there was plenty of testimonial and documentary evidence presented at trial to the effect that Ms. Vazquez-Valentin qualified by education and by experience to the position of Executive Director II under the 1991 plan and under the 1997 plan, so she did not have to be demoted to Office Worker Typist I, the position that she occupied in 1989, four years after she started to work at the Municipality of Toa Baja, Puerto Rico. It was for the jury to find that her demotion to Office Worker Typist I, the post she had held more than 12 years before, was politically motivated in violation of her First Amendment rights. Also, it was for the

jury to make the proper inferences according to the evidence.[1]

Furthermore, the parties made a stipulation regarding the audit report which was read to the jury and cited by the appellate court in its decision. *Vazquez-Valentin v. Santiago-Diaz*, 459 F.3d at 152. Appendix 19a. The appellate court did not cite the last part of the stipulation and charge to the jury which reads: "...that is to say, that you the jury, may take this statement only in connection with defendant's allegation that the statement, and not political affiliation, was the impetus for the municipality's investigation." Jury Trial transcript, page 552. The district court continued: "any law stated within the report may be utilized in the final instruction as to the jury. Jury Trial transcript, page 552. In

[1] The evidence on record shows that Ms. Vazquez-Valentin started to work at the Municipality of Toa Baja in 1985 when she was in High School, but she went up the ladder improving herself educationally and when she was appointed Executive Director she already had a college degree.

other words, defendants could have requested the jury instruction regarding the Puerto Rico law about the failure to heed a recommendation in a Comptroller's audit report, but defendants did not request such a jury instruction. On the other hand, defendants introduced evidence, both testimonial and documentary, during the trial, trying to prove that Ms. Vazquez-Valentin's demotion and constructive discharge was done not for political motive. Of course, the Comptroller's audit report at no time mentioned Ms. Vazquez-Valentin's specific situation. The report dealt only with other employees of the Municipality that were relatives of the prior Mayor, or employees with salaries and positions that received raises without meeting the job requirements.

Likewise, the jury was told many times during the trial and at the charge that plaintiff's demotion was based on a plan to reorganize the working positions within the Municipality, because of the Comptroller's conclusion about

the irregularities and the illegal appointment of many employees and the illegal pay raises, and not because of political motivation. *Vazquez-Valentin v. Santiago-Diaz*, 459 F.3d at 152. Appendix 21a.

In addition to what we have explained above, it is clear that defendants adopted the proposed stipulation offered by the appellate court. Therefore, we submit that defendants waived any objection to the paragraphs the court read to the jury. We repeat, what the court read to the jury was the paragraph stipulated by the parties during trial. That is, facing the ruling of the district court that the Comptroller's audit report and a letter from OCALARH were hearsay, and that under Rule 403 of the Federal Rules of Evidence the court had discretion to deny documents that could otherwise be admissible, defendants then agreed to the proposed stipulation offered by the district court. Defendants had the choice of not accepting the proposed stipulation. We

have to clarify what Honorable Circuit Court Judge Lipez, says at page 152 of the opinion. He says that the "district court told the jury" what appears in such pages 152 and 153. Appendix 19a and 20a. Actually, what the court was telling the jury was informing them of the stipulation reached by the parties. They were not "statements" by the district court as Honorable Judge Lipez described them. They were the text of the stipulation agreed between the parties.

We submit that if the district court committed error in the exclusion of these documents, the error was harmless, since there was enough evidence of political discrimination for the jury to have decided as it did.

Very respectfully, we have to take exception to the comments of Honorable Judge Lipez when he at page 154 (Appendix 26a) of his opinion cited the case of *Lugo vs. Toa Baja*, 329 F.Supp.2d 221 (D.P.R. 2004) and said: "In *Lugo*, which reached trial after our decision in *Gomez*, the district

court appropriately allowed in evidence the same documents that it excluded in this case. Presumably in light of that evidence, the district court concluded that the defendants in *Lugo* (the same defendants as here) were entitled to qualified immunity. The documents that we discussed above clearly are relevant to the qualified immunity analysis and should be evaluated by the district court when it considers that issue again." *Vazquez-Valentin v. Santiago-Diaz*, 459 F.3d at 154. Appendix 26a. We take exception because in our case defendants stipulated with plaintiff the paragraphs that the district court judge read to the jury. And, also, our case went all the way through 9 days of jury trial where testimonial and documentary evidence went to the jury. In addition to that, Honorable Judge Pieras decided the *Lugo* case at the summary judgment stage, while Ms. Vazquez-Valentin's case was decided on the merits after a long trial. Also, if you read the *Lugo* case you will find out that the partie s

stipulated the audit report of the Comptroller while in our case we opposed its admissibility during trial because of hearsay and due to Rule 403 of the Federal Rules of Evidence. In addition to the Comptroller's audit report, in *Lugo* all the letters from OCAP and OCALARH were also stipulated by the parties, contrary to what took place in Ms. Vazquez-Valentin's case.

CONCLUSION

For the foregoing reasons, the petitioner respectfully submits that the petition for a writ of certiorari should be granted and the judgment below reversed.

RESPECTFULLY SUBMITTED.

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APPENDIX

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